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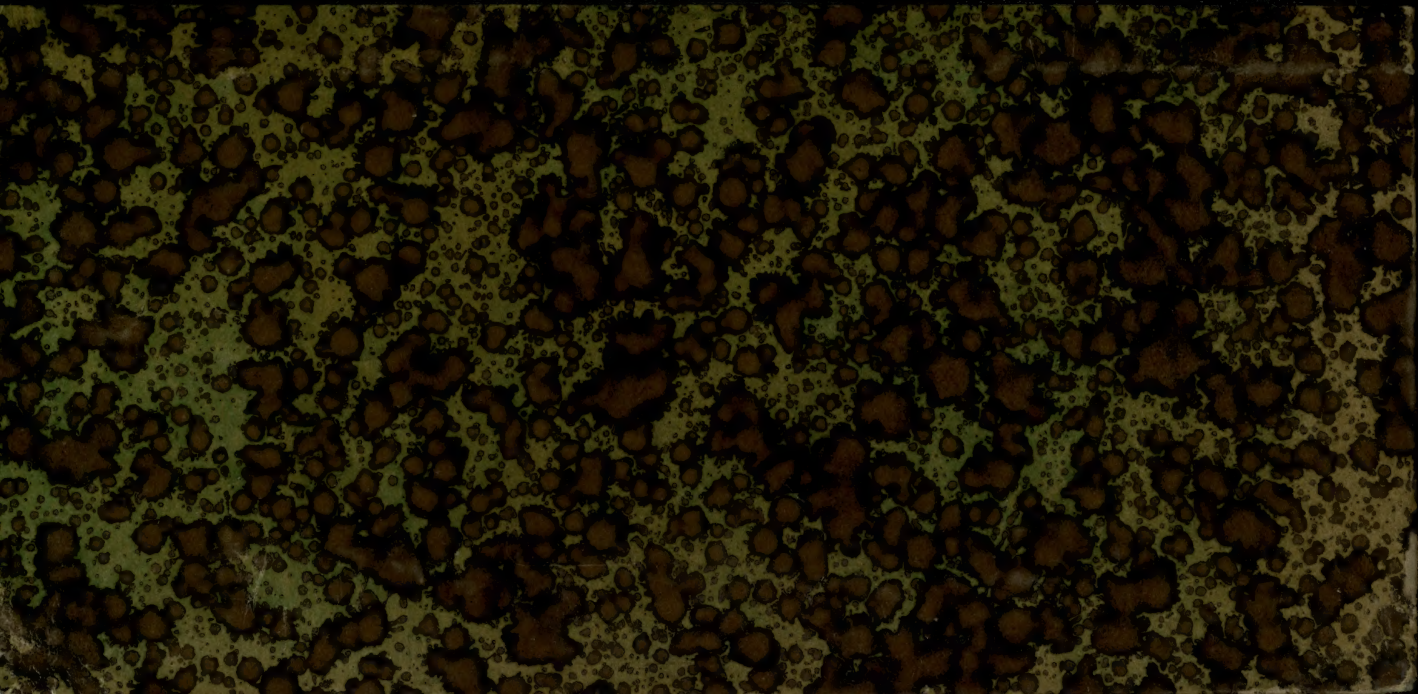

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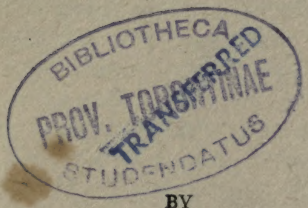
THE CHURCH & CHRISTIAN MARRIAGE



BY

MOST REV. DR. COHALAN,

Assistant Bishop of Cork

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Mrs. McCann and the Decree "Ne temere."

WHAT is this Mrs. McCann row about? What is the Decree *Ne temere?* Such are the questions we hear asked on every side. People defend or condemn the agitation about Mrs. McCann according to their different religious beliefs and political opinions. To some, like Mr. Campbell, K.C., it is the protest of freemen "against an act of intolerable aggression on the part of a foreign power." To others it is partly a political agitation, and partly the work of the old microbe of Protestant ascendency and intolerance, which was supposed to have been exterminated, but which, they say, is still with us, alive and active, producing a paroxysm of passion, because, forsooth, the Pope of Rome did not enter into diplomatic relations with the ministers of the "Reformed" religion in Ireland before promulgating his recent marriage regulations. Speaking of Rome, *The Church of Ireland Gazette* writes: "It is not long since her priests dare not perform a marriage between a Protestant and a Roman Catholic."* There is the cause of the agitation, people say: the memory of the days of full-blown ascendency, and madness at the thought that the Catholic Church now insists on having the marriages of Catholics in Ireland, even mixed marriages, celebrated according to general ecclesiastical law.

I offer no opinion myself about the relative merits of these explanations. I prefer to treat of the doctrine and discipline of the Church in relation to Christian marriage. And it will be found that the Church's marriage doctrine is sacred and sublime, and that her discipline is not unreasonable even in cases such as the case of Mrs. McCann.

* *Church of Ireland Gazette*, Jan. 27, 1911, p. 81.

THE CHURCH AND CHRISTIAN MARRIAGE:

CHAPTER I.

Christian Marriage as a Contract and Sacrament.

We sometimes speak of the *contract* of marriage, and again we speak of marriage as a *sacrament*; and hence it is necessary to deal with marriage as a contract and as a sacrament, and to explain the relation between the contract and the sacrament.

I.—Christian Marriage as a Contract.

Some authors have objected to the use of the word "contract," when speaking of marriage, and some codes of law have abstained from using it, because they considered the term, as it were, too commercial, too secular, and therefore derogatory to the sacred character of the marriage consent; but marriage is called a contract in official ecclesiastical documents. Marriage can be considered in the act of contracting, that is, as the act of consent by which man and woman agree to become husband and wife; and as the permanent state and bond which result from the act of contracting. Marriage in the act of contracting is "a contract in which a man and woman mutually give and receive a right to each other's person for the purpose of human generation, and pledge themselves to individual companionship of life"; and marriage as a permanent state is "the resulting in-

dissoluble bond of union between husband and wife, implying mutual rights for generation, and the duty of indissoluble individual companionship of life." Without the true consent of man and woman to become, at the moment, husband and wife there would be no marriage ; and no matter how the consent be signified or expressed, it is understood to give the *right* already described for the purpose of human generation ; but the *use* of marriage does not enter the essence of the marriage contract, and a valid marriage can coexist with the subsequent maintenance of perpetual virginity. Any condition introduced into the marriage consent by both or one of the contracting parties, opposed to the mutual *right* to each other's person for the purpose of human generation, or opposed to the essential properties of marriage, such as its indissolubility, would render the marriage invalid. But this is not peculiar to marriage : all contracts are invalidated by conditions which limit the contractual consent, and which are opposed to the substance of the contract.

Marriage, then, is a contract, and supposes the mutual consent of the contracting parties to become husband and wife. But not every agreement of a man and woman to become husband and wife is a valid marriage. If a brother and sister, for example, or two persons already married, or a married and single person, agreed to become husband and wife, there would, of course, be no marriage. Marriage, like all other contracts, must be subject to some public authority which shall determine the conditions and form of the nuptial contract. According to Catholic teaching Christian marriage is subject to the Church. The Church, however, cannot so interfere with marriage as that it will be no longer a contract of a man and a woman to become husband and wife ; but it can make impedi-

ments, impose conditions, and prescribe a form for the marriage contract. The Church is as independent and as well equipped with authority within her own sphere as the State is in the civil sphere; and as the State prescribes certain conditions and certain forms for the validity of civil contracts, for example, for wills, so the Church can make impediments and prescribe a form for marriage. The form can vary with times and places and persons; and hence a marriage might be valid at one time or in one place or in regard to certain persons, which would be invalid, if celebrated in the same form, at another time or in another place or in case of different persons.

I dwell on this point because in the course of the Mrs. McCann agitation protestant bishops and ministers were amusing themselves with the expressions: "different-period-morality" and "geographical morality," and were asking: How is it that mixed marriages were valid and lawful before the decree *Ne temere*, and are invalid and immoral after? How can a thing be moral in Germany and immoral in Ireland; how can mixed marriages be lawful in Germany though not contracted in the presence of the parish priest, and be invalid and unlawful in Ireland? It is strange that Protestants should have any difficulty about these points. Catholics and Irish Protestants differ about the authority which controls the Christian marriage contract: Catholics say it is the Church, while Protestant ministers say it is the State. But in the Protestant hypothesis, that the State has control of Christian marriage, have we not the difficulty—if it be a difficulty—of "different-period-morality" and of "geographical morality"? Has not the necessary legal form of marriage varied at different times, and been different for different parts of the United Kingdom?

And what, then, comes of all the declamation about "geographical morality" and "different period morality"? The subject itself is very simple. The validity of a marriage in one place and its invalidity in another, though celebrated in the same way, does not imply any difference in the principles of morality. It implies that a competent authority has prescribed and enforces for one place, but not for another, some condition or form as necessary for the validity of the matrimonial contract. According to Catholic doctrine the marriage contract is subject to the Church, as civil contracts are subject to the authority of the State. The State can prescribe conditions that shall be necessary for the validity of civil contracts, as it prescribes conditions for wills; and a contract might be valid at one time and invalid at another, though entered into in the same way, because the conditions prescribed by the State might be different. And so a marriage might be valid at one time and invalid at another, though contracted in the same way, because the form prescribed by the Church might be different.

Christian marriage, then, is a contract. In the case of unbaptised persons marriage is only an indissoluble contract; it is not a sacrament. Over the marriages of the unbaptised the Church claims no authority, unless indirectly in the case of the marriage of a Christian and an unbaptised person. If the Church imposes on the Christian party the condition of expressing his or her marriage consent in the presence of the parish priest, the non-baptised party must observe the same condition. For the contract is one and indivisible; it requires the presence of both at the mutual giving and accepting in marriage; it does not happen that a bridegroom goes to one church and his bride to another to declare their consent.

II.—Christian Marriage as a Sacrament.

CHRISTIAN marriage, according to the teaching of the Catholic Church, is a sacrament of the New Law, instituted by Jesus Christ. So the Council of Trent has defined.* It is true that, at the great Mrs. McCann meeting in Belfast, Dr. Crozier, then Bishop of Down and now Protestant Primate, told his audience that it was at the Council of Trent marriage was first discovered to be a sacrament. But the Bishop's history is at fault. Before the Council of Trent, in the Council of Florence, marriage is declared to be a sacrament in the Decree of Eugene IV. for the Armenians. Before the Council of Florence, at the second Council of Lyons (1274), marriage is declared to be a sacrament in the confession of faith made to Gregory X. by Michael Palaeologus: "The same holy Roman Church holds and teaches that there are seven ecclesiastical sacraments, *viz.*, one Baptism; another, the sacrament of Confirmation; another, Penance; another, the Eucharist; another, the sacrament of Orders; another, Matrimony; another, Extreme Unction." Earlier still, in 1210, in the profession of faith prescribed by Innocent III. for the Waldensians returning to the Church, matrimony is enumerated with the sacraments. Therefore, at the beginning of the thirteenth century it was universally recognised as a dogma of the Church that matrimony is a true and proper sacrament of the New Law, and a confession of this truth was required of those who were seeking reconciliation with the Church. And, when we pass from the Councils of the Church to the Schools, we find nearly all the medieval theologians teaching that matrimony is a sacrament, although there was some difference of opinion among

* Sess. XXIV., Can. 1.

them about the grace conferred by matrimony. Even Durandus, who at one time denied that matrimony is a sacrament, felt himself obliged, by the force of the consensus of opinion opposed to him, to concede that matrimony is a sacrament, though somewhat in a category apart from the other sacraments. And so back to the beginning. In an authoritative living Church beliefs are transmitted from generation to generation. And so the doctrine of the Seven Sacraments has been transmitted to us, its import and meaning receiving development and clearness from generation to generation.

III.—The Relation of the Sacrament to the Contract
What does the Sacrament add to the Contract?

CHRISTIAN marriage, then, is a contract and a sacrament, *But what is the relation of the sacrament to the contract?* Is the sacrament something accessory to the contract—for example, the benediction of the priest, or is the contract itself the sacrament? The contracting parties themselves certainly make the *contract;* and who is the minister of the *sacrament* of matrimony? I ask these questions to remove a number of misrepresentations of Catholic belief which have appeared in the speeches and writings of Protestants since the Mrs. McCann agitation began.

What is the relation between the contract and the sacrament in matrimony? What is the *sacrament* of matrimony? Some French theologians of the seventeenth century, and some canonists of the time of Joseph II. of Austria, taught that the sacrament is merely an accessory of the contract; that the contract is separable from the sacrament; that the blessing of the priest is the sacrament. Others held that both the

contract and blessing are intrinsic parts of the sacrament of marriage, just as the pouring of water on the subject and the recital of the words, *I baptize thee in the name of the Father and of the Son and of the Holy Ghost,* are intrinsic elements of the sacrament of baptism. But these opinions are now obsolete ; and the teaching of the Church is, that the marriage contract itself is the sacrament. Accordingly, among Christians, the mutual consent to become husband and wife is itself a sacrament ; if there is a valid matrimonial contract it is a sacrament, and if it is not a sacrament it is not a valid matrimonial contract before the Church. The Church, as already stated, can prescribe conditions and a certain form for a valid marriage contract ; but assuming the contract to be valid, it is also a sacrament. When the presence of the parish priest is necessary for the validity of marriage, a clandestine marriage is neither a sacrament nor a valid contract in the eyes of the Church ; but if the presence of the parish priest were not necessary for the validity of marriage, the simple mutual expression of consent to become husband and wife (supposing that there is no diriment impediment) would be a valid contract and a sacrament, no matter in what place or in what form it would be expressed. Protestant writers, then, are in error when they say that down to the Council of Trent marriage was " a civil ceremony " and not a sacrament. A marriage could have been validly celebrated without the benediction or presence of a priest before the Council of Trent, by a real consent to marriage on both sides, as it can still be in Germany, in the case of mixed marriages ; but it would not have been *a mere civil ceremony*, it would have been a *sacrament.*

I have said that, according to the teaching of the Catholic Church, the marriage of *Christians* is either a

sacrament, or is not a valid contract at all. For this teaching is not confined to the marriage of *Catholics*: the Church teaches that the marriage contract is always a sacrament, if it is a valid contract at all, when the bride and bridegroom are both baptised persons, whether they are Catholics or non-Catholics.

Next I inquire who is the *minister* of the *sacrament* of matrimony? The answer is obvious. Those who thought that the sacrament is the blessing of the priest naturally taught that the priest is the minister of the sacrament of matrimony. But assuming that the contract itself is the sacrament, the ministers of the sacrament are the contracting parties. The parish priest or his delegate, though his presence as a witness be necessary for the validity of the marriage contract, is not the minister of the sacrament of matrimony; he is only the official witness of the contract for the Church, who also gives the Church's blessing.

According, therefore, to Catholic doctrine, our Lord elevated the true matrimonial consent of a Christian bride and bridegroom to the rank of a sacrament of the New Law, to give grace to be faithful to each other, to moderate the passions in the use of marriage, to bear the burdens of the married state, to live happily together, and to bring up their children in the fear and love of God. The Sacrament is defined in our catechisms to be: "A Sacrament which gives grace to the husband and wife to live happy together and bring up their children in the fear and love of God." Hence the Church was always solicitous that marriage should be associated with a religious ceremony; marriages without the presence of a priest were always considered irregular and unlawful, even when they were admitted to be valid; the rubrics prescribe that those about to wed be admonished to prepare them-

selves for the sacrament of matrimony by confession and Holy Communion; and many Catholics arrange to be married with holy Mass, when permissible with the votive Mass *Pro Sponso et Sponsa* (for Bridegroom and Bride), and communicate at the Mass.

* * * * * * *

It may be asked: How is it that Dr. Crozier, now the Protestant Primate, could have stated at the Belfast meeting that marriage was first discovered to be a sacrament at the Council of Trent; that the Tridentine doctrine was founded on a mistranslation of the text, Ephesians v., 32, in the Douay Bible; that before the Council of Trent marriage was a "civil ceremony"? "And the decree," said Dr. Crozier to his audience, "was based upon the discovery for the first time at the Council of Trent that marriage was a sacrament, and required the intervention of a priest of the Roman Church. . . . The whole edifice was founded on a mistranslation, Ephesians v., 32. Where our authorised translation reads: 'This is a great mystery, but I speak concerning Christ and his Church'; here the Douay version translates the Greek word μυστήριον by the word 'sacrament.' . . . Before the Council of Trent, A.D. 1563, marriage had been a ceremony, not requiring the intervention of a priest at all, and therefore it could not have been a sacrament until the Council of Trent declared it to be a sacrament."* The lack of theological and historical knowledge revealed in the Primate's speech will not have come with surprise on those who are familiar with the character of the theological education given in the divinity school of Trinity College. But others are bewildered at the Bishop's unacquaintance with theology and

* From the Supplement, *Church of Ireland Gazette*, Jan. 13, 1911.

history. Thus the English *Church Times*, a ritualist organ, writes of the Bishop's oration :*

"It is with feelings of peculiar shame that we read the outpourings of the right reverend prelate. It is true that he began with a sort of hyperorthodoxy by speaking of marriage as 'the most sacred institution which God had ordained since man and woman came to be.' We have always known marriage to be a sacrament, but we must protest against its undue exaltation to be the most sacred of all sacraments. But the Bishop went on with a complete somersault to say that marriage was discovered to be a sacrament only at the Council of Trent.

"Furthermore, he made the astonishing assertion that the whole of this doctrine was founded on 'a mistranslation in the Douay version of the one text Ephesians v., 32.' Thus the 'sacrament of marriage' was never heard of before the Council of Trent—was never spoken of, for example, by any of the schoolmen—and the Council depended on an English translation which did not appear until twenty years afterwards. This is theology with a vengeance, not to say history.

"With a further excursion into history, the Bishop of Down informed his audience that before the Council of Trent 'marriage was a civil ceremony.' He should have really given some examples of this hitherto unknown ceremonial. But enough. We are filled with shame, we say, in hearing of this rubbish poured from the lips of a Bishop of our Communion in the greedy ears of Belfast groundlings. So speaks the worst kind of demagogue pandering to the fiercest prejudice, stirring the most

* I quote from the *Church of Ireland Gazette*, Jan. 20, 1911.

odious passions, and doing all in the name of 'our civil and religious liberties.' Poor Ireland!"

The Church of Ireland Gazette, with no better theological or historical equipment, attempts a feeble defence of Dr. Crozier. But the fact remains that, according to the *Gazette's* own account, Dr. Crozier spoke of the sacrament theory as being founded on a mistranslation in the Douay Bible; that he spoke of the "discovery" of the sacrament by the Council of Trent; that he said marriage in pre-Tridentine times was only a civil contract. It was the Council of Trent first that *solemnly* defined that matrimony is a sacrament; but the doctrine had been recognised for centuries before the Council as a part of the dogmatic teaching of the Church. And though marriage between Christians would have been valid without the presence or benediction of a priest before the Council of Trent, it would not have been *a mere civil contract*, it would have been a *sacrament*. This is clearly stated in the passage in the *Catholic Dictionary* to which the *Gazette* appeals to vindicate Dr. Crozier; but the writer did not see the meaning of the passage.

"It is evident," the *Catholic Dictionary* says, "there must be real consent to marriage on both sides, otherwise there can be no contract, *and therefore no sacrament*. But is the expression of mutual consent enough? The great majority of medieval theologians (speaking prior to the decree of Trent), though William of Paris is quoted in the other side, answered 'Yes.' They held that wherever baptised persons contracted marriage, *they necessarily received the sacrament of marriage also*." And yet the *Gazette* quotes the *Catholic Dictionary* to prove that marriage, according to Catholics, was only a *civil ceremony* before the Council of Trent! The medieval doctrine was the same as the doctrine of the

Church at the present day: that the contract itself is the sacrament, and consequently is inseparable from the sacrament; that the marriage of baptised persons is either a sacrament, or that it is not a valid contract at all.

After the Protestant Primate and the *Ecclesiastical Gazette* came the Rev. Mr. Gregg, until recently Incumbent of Blackrock, Cork, and now Archbishop King's Lecturer in Divinity, Trinity College. In a lecture delivered in Cork, March 17, 1911, Mr. Gregg said :*

> " If a priest is necessary for a valid marriage then all marriages without a priest before the Council of Trent were invalid. It is a monstrous and ridiculous claim that Rome should be able to alter the essentials of a Sacrament, add to them, or diminish them. . . . I dare to submit that time and place cannot alter the essentials of a Sacrament. . . . that we should be told that the kind of marriage which had been a Sacramental marriage in 1560 was not a Sacramental marriage in 1570, is a piece of Sectarian anti-Catholicism. Think what it means. One of the essentials of the Sacrament of holy matrimony was not discovered—or at least enforced—until 1564 ! "

Mr. Gregg's language is rather strong, but his knowledge of the Catholic doctrine on Christian marriage is more than proportionately defective. If I may use his own language I would say that it was " monstrous and ridiculous " for a Protestant clergyman to deliver a violent harangue against the decree *Ne temere* in relation to sacramental doctrine without making himself familiar with the Catholic doctrine on the sacrament of Matrimony. Mr. Gregg himself does not hold that

* The " Ne Temere " Decree. By the Rev. J. A. F. Gregg, B.D. (Dublin, 1911), p. 7.

Christian marriage is a sacrament. He argued on the assumption of the Catholic doctrine, that it is a sacrament. Then if he had studied the Catholic doctrine he would have found that the essence of the Sacrament always remains the same ; that at every period of the Christian era, and in all places, it consisted in this, that it is a contract of a Christian man and woman to become husband and wife. The Church has not changed and cannot change the essence of marriage. But as the State, without changing the essence of a contract, can prescribe conditions for its validity, so can the Church make impediments and prescribe a form that shall be necessary for the marriage contract.

CHAPTER II.

The Relation of Church and of State to Christian Marriage.

We cannot hope for agreement of opinion among Catholics and Protestants about the question of the respective rights of the Church and of the State in relation to Christian marriage, as the solution of the question depends on the nature of Christian marriage, whether it be a mere civil contract or a sacrament-contract, about which Catholic doctrine and Protestant opinion differ. We cannot expect agreement about conclusions when people disagree about the principles on which these conclusions proximately depend. The question must then be considered from different points of view. I will consider: what should be the relation of Church and State to Christian marriage in the Catholic hypothesis, that Christian marriage is at the same time a contract and a sacrament? What in the Protestant hypothesis, that Christian marriage is only a civil contract? How do the Church and the modern State get along in practice, considering the different principles and the different laws of the Church and of many modern States about marriage? Does the Catholic position interfere with civil and religious liberty?

I.—The Relation of Church and State to Christian Marriage according to Catholic Doctrine.

Let me observe that controversies like the McCann marriage controversy are not without their consolations and advantages to the Catholic world; as they serve

to exhibit in a striking way, in comparison with other religions, the sanctity of the doctrine and institutions of the Catholic Church, and their value and efficiency in safe-guarding public morality. The question of marriage is occupying the attention of nations; and thoughtful Christians are becoming alarmed at the evil consequences to society of the civil-contract, or pagan, theory of marriage, so dear to ministers of the "Reformed" Religion in Ireland. For—let there be no doubt about it—the alarming spread of divorce and of civil re-marriage of divorced persons in the Christian world is but the natural corollary of the civil-contract, or pagan, theory of marriage. Yet, at the sound of the anti-Roman horn, Protestant ministers of all denominations in Ireland rally to the defence of the pagan marriage; only to realise, as so often happens, when the fever of the agitation shall have sped its course, that they have taken up a position which is disastrous to themselves as claimants to be a Christian Church, which marks them outside the Catholic Church, which separates them from the Greek Church, and all the religious bodies once united with the Greek Church, which segregates them from all that stand for dogmatic beliefs and independence of Church from State in the Anglican Communion.

What—let me repeat—*is the relation of Church and State to Christian marriage according to Catholic doctrine?* There were some theologians and canonists, as I have already stated, who held that the sacrament is a mere accessory of the contract, *viz.*, the blessing of the priest, and that jurisdiction over the marriage contract belongs of right to the State. They were called "Court Theologians." I suppose in Ireland they would have been called "Castle Theologians"; and I am afraid that all Irish Protestant Theologians

are "Castle Theologians" in relation to Christian marriage. But the Catholic doctrine is, that the contract itself, the consent of the parties to become husband and wife, is the sacrament; that there is no longer between baptized persons a natural contract of marriage, but a supernaturalised contract, a contract elevated to the rank and dignity of a sacrament; that the administration of the sacrament or the sacrament-contract of marriage, like the administration of the other sacraments, belongs exclusively to the Church. It might perhaps be urged that, though the contract and sacrament are one, yet marriage might be considered from the point of view of the contract and from the point of view of the sacrament, and that the State might have authority over the contractual side of marriage, and the Church over the sacramental side. But that cannot be admitted. Let us suppose that in some Christian State Baptism was made a necessary condition for official appointments. Should we then distinguish in baptism between the ablution and the words, "I baptize thee in the name of the Father and of the Son and of the Holy Ghost"; and concede to the State jurisdiction over the ablution, as over ordinary bathing, and reserve to the Church jurisdiction over the form? Evidently there would be but one baptism, and that a supernatural rite through and through; and baptism would fall exclusively within the province of the Church. And so, according to Catholic teaching, Christian marriage belongs exclusively to the province of the Church; and a division of control over marriage between Church and State would imply either that marriage is not a sacrament at all, or that marriage is a sacrament, but that the sacramental element and the contract are really distinct and separable.

If we suppose, then, an ideal Catholic State, whose

government recognised in legislating the doctrinal beliefs of the citizens, the administration of Christian marriage, as of the other sacraments, would be left, as of right, to the Church. To the Church exclusively would belong the determination of the conditions, the impediments, and the form of the marriage contract, the judicial examination and decision of cases of alleged nullity, the concession or refusal of demands for separation or for release from cohabitation. In the ideal Catholic State there would be no dissolution of the bond of a consummated marriage. There would be no civil marriage for the Catholic citizens. The State would recognise the intrinsic effects of the Church marriage, *viz.*, that the married couple are husband and wife, and that their children are legitimate. But it would belong to the State alone, as of right, to define the conditions for succession to hereditary titles, property, and the like. And parents could forbid a particular marriage, military and police authorities, banks and similar institutions, could prescribe certain conditions for the marriage of their subjects; for these prescriptions would regard, not the contract or sacrament of marriage in itself and its religious celebration (which belongs to the Church), but the interest of the services concerned, and if reasonable could bind in conscience.

II.—The Relation of Church and State to Christian Marriage according to Protestant Doctrine.

I now come to consider the relation of Church and State to Christian marriage according to the Protestant position, that Christian marriage is only a "civil ceremony." According to this theory the Church has no jurisdiction over Christian marriage; she may at most declare, but ineffectively, that by divine law marriage is indissoluble, and that there are certain

divine impediments to marriage, and she can give a benediction to the wedded party. To the State exclusively, according to Protestant theology, belongs, as of right, jurisdiction over Christian marriage: the right of determining the conditions and the form of the marriage contract, of deciding cases of nullity, of decreeing judicial separation. Then about the dissolution of a consummated marriage? Some of the Protestant divines maintain with Catholics that by divine law the bond of such a marriage can never be dissolved, not even on account of adultery, while others hold that it can be dissolved for adultery and other causes. But the Civil Power cares little for either party, it goes its own way, legalising dissolution of consummated marriages, and granting the right of re-marriage even to the guilty party; and the "Court Clergy" obsequiously give their benediction to this profanation of Christian marriage, to this immoral attempt at an impossible marriage. The Protestant Church humbly or humiliatingly consents to count for nothing, except as Caesar permits, in the matter of Christian marriage; and then seeks to compensate for its recreancy by an occasional "protest" against Rome.

Protestant bishops and ministers object and say that they do not look on marriage as a mere *civil ceremony*; that they regard it as a sacred contract, and give it the blessing of their church. But every lawful contract is a sacred thing, and would be the better of a blessing. Calvin would call marriage a sacred contract, and give it a blessing; but yet he said it was no more a sacrament than farming, or the barber's or tailor's craft.

Some may object and say that this represents the doctrine only of some of the Protestant Churches, and not of all. I think it represents fairly the doctrine of

those Churches and individual Protestants who still follow the banner of the "Reform"; but it does not profess to represent the doctrine of those separated Anglicans who repudiate the name "Protestant" and who regard the "Reform" as the greatest curse that ever befell Christendom.

III.—The Church and the Modern State in their Actual Relation to Marriage.

It has been urged frequently during the McCann marriage agitation that the position of the Catholic Church in relation to Christian marriage is a standing menace to civil and religious liberty. It may be well then to consider how the Church and State get on together in relation to marriage in the circumstances of modern society, that we may see if there is any foundation for the charge that the Church's position about marriage is a menace to civil or religious liberty.

Civil marriage has been introduced into nearly all modern States, Catholic as well as Protestant. By "civil marriage" is understood "a marriage contracted by two persons, capable in law of contracting, according to a form prescribed by the civil law." As already stated, if the presence of the parish priest or his delegate were not necessary for the validity of the marriage contract, a civil marriage without the presence of the parish priest would not be a mere civil ceremony; it would be, according to Catholic belief, a real contract and sacrament. Before the decree *Ne temere* the marriage of a Catholic and Protestant in a Registrar's office in Ireland might be called a civil marriage, inasmuch as it would have been contracted according to a form prescribed by the civil law; but, assuming true consent, it would not have been a mere civil ceremony, it would have been a valid contract and sacrament.

But when the presence of the parish priest or his delegate is necessary for the validity of the contract, then the mutual expression of consent before a civil Registrar would be, according to Catholic doctrine, a mere civil marriage, a mere civil ceremony, and not a valid matrimonial contract.

The enactment of civil marriage by a State does not necessarily imply disbelief in the Church's *doctrine* about marriage. We could conceive the members of a government saying: We are Catholics; we believe there is no valid contract of marriage between Christians but the sacrament contract; but there are citizens in the State for whom we must make provision by civil marriage; we will, therefore, establish civil marriage and make it available for all (as limitation to certain citizens would be odious), though we believe that for Christians our civil marriage is not a real marriage at all, but only a civil ceremony. Why the Church should disapprove of such a law I will state further on.

The State might make civil marriage obligatory on all, or it might recognise civil marriage without making it universally obligatory. I will consider the actual relation of Church and State in regard to marriage in countries like Austria and Spain, where the Church law is respected, or not seriously deviated from; and in countries where civil marriage is permitted, or made obligatory, taking France as an example of a country where civil marriage is obligatory on all, and England as an example of countries where civil marriage is recognised in law, but not made universally obligatory.

Church and State in Austria and Spain.

In Austria the parish priest, who is the official witness of marriage for the Chruch, is also recognised as a State official to witness the marriage for the State; while

in Spain a special State official attends to witness the marriage for the State. And who can say that the civil rights of these States are interfered with ?

Church and State in France in Relation to Marriage.

In France civil marriage is obligatory on all ; all must go through the civil ceremony of marriage in presence of the civil magistrate before the marriage is celebrated in the Church. The Church disapproves of such a law. Because though there is nothing intrinsically immoral in Catholics going through a ceremony, which is regarded by them as a mere civil ceremony, before their marriage in the Church, still a law obliging all to go through the form of civil marriage is, on the one hand, not necessary, and, on the other hand, not without moral danger ; for some careless Catholics, who otherwise would contract marriage in the Church, will remain content with the civil marriage, and continue to live in what the Church must regard as a state of concubinage.

Yet the Church and State manage to get along on their different lines. The State recognises the civil marriage for all civil purposes—for the legitimacy of children, the succession to property and the like, and takes no account of the religious marriage. On the side of the Church, Catholics are advised and ordered to comply with the law of civil marriage, in order to be recognised in law as husband and wife, to have the legitimacy of their children recognised in law, to secure succession to property and the like ; but the Church does not recognise the civil ceremony as a valid marriage contract, she requires her children, after the civil marriage, to go and contract before their parish priest, and she regards as concubinage the state of those who remain content with the civil marriage. So the State

takes no cognisance of the religious marriage, and does not concern itself whether the civil marriage is recognised by the Church or not; and the Church regards the civil marriage as a mere civil ceremony, as null and void in conscience and before God, and regards those Christians who are content with this civil ceremony as living in concubinage.

Church and State in Relation to Marriage under English Law.

Under English law civil marriage is recognised by the State, but is not obligatory. The State recognises for State purposes civil marriage and also religious marriages celebrated in churches and chapels under certain conditions. According to the present discipline of the Catholic Church no marriage of Catholics is valid unless it be contracted in the presence of the parish priest (or ordinary, or the delegate of either) and at least two witnesses. In England an official of the State attends for Catholic marriages, and Catholics must declare their mutual matrimonial consent before him as the representative of the State. Thus Catholics who have already declared their mutual consent in the presence of the priest, and are married, have to renew their consent before the Registrar or his representative (if Mrs. McCann had gone before a priest and renewed her consent—which very likely she would have done only for the ministers—all the trouble in her case would have been avoided). In Ireland the State recognises the validity of a marriage of Catholics if contracted before the registrar, or before a priest in the manner prescribed by the Church, or before a person whom the State regards as being in priests' orders, whether the conditions prescribed by the Church are observed or not. Thus then the State

recognises certain marriages for the civil effects of marriage, whether they are accepted by the Church or not; and the Church prescribes her own conditions, and only regards as valid in conscience the marriages that are contracted according to her laws.

IV.—The Catholic Position and Civil and Religious Liberty.

The question would not arise at all in an ideal Catholic State. It is a part of Catholic belief that Christian marriage falls under the jurisdiction of the Church, and that according to existing discipline a clandestine marriage is no marriage. This doctrine would be accepted and acted on in the ideal Catholic State, and a clandestine marriage would, in civil law, be an invalid marriage. Accordingly the question of civil or religious liberty would not arise at all, for no one would have a right, as a citizen, to expect that his invalid clandestine marriage should be accepted by the State as a valid marriage; just as in England the rights of civil liberty do not demand that a person shall be free to contract marriage otherwise than as prescribed by the State. Then in States where different religions are professed, and, indeed, in modern States generally, the question of civil and religious liberty does not arise. The State regards certain marriages as valid for civil rights, whether they are approved by the Church or not.

The difficulty about civil and religious liberty is urged more especially in dealing with mixed marriages; and, accordingly, I will revert to this question further on, when treating of mixed marriages.*

* See p. 41

CHAPTER III.

The Marriage Law of Trent and the Recent Decree "Ne Temere."

ASSUMING that Christian marriage is a sacrament, that it is subject to the authority of the Church, that the Church can prescribe conditions and a form for marriage as the State prescribes conditions for civil contracts, I am led on to consider the Tridentine law of marriage, and the decree *Ne temere*.

I.—The Marriage Law of the Council of Trent.

There is a difference of opinion as to whether the presence and benediction of a priest had ever been made necessary by the Church before the Council of Trent for the validity of a Christian marriage. Certainly at the time of the Council, and for centuries preceding it, no particular form or solemnity was necessary for the validity of marriage. The mutual expression of consent to become husband and wife, even without a witness, was sufficient for a valid contract and sacrament. But it was always considered unlawful to contract marriage without the blessing of the Church.

It is not surprising to learn that inconveniences and abuses resulted from the possibility of contracting marriage by mutual consent unattested by witnesses. Sometimes the husband deserted the wife, denied the former marriage, contracted an invalid marriage with another, and lived in adultery. Sometimes the husband and wife kept the marriage secret, or the husband betook himself to some place where his marriage was

unknown, and took orders—saying nothing about his marriage. The Church tried, first, the more moderate method of trying to put an end to clandestine marriages by forbidding them and making them unlawful; but the mere prohibition was not effective in preventing the abuses. Then to eradicate the evil effectively the Council of Trent enacted that henceforward a marriage should not be valid unless it were contracted in the presence of the parish priest, or another priest with his leave or the leave of the Ordinary* and two or three witnesses. In the famous chapter "Tametsi"† we read: "The holy Synod renders those who shall attempt to contract otherwise than in the presence of the parish priest or another priest with his leave, or the leave of the Ordinary, and two or three witnesses, altogether incapable of so contracting; and contracts of this kind it decrees to be void and null, as by the present decree it renders them void and null." The Council prescribed that the law should be promulgated in every parish, and that it should begin to have force only after thirty days from its first publication in a parish.

This, then, is the substantial *form* of marriage since the Council of Trent: that it should be contracted in the presence of the parish priest, or another priest by his leave, or the leave of the Ordinary, and two or three witnesses.

The question is raised by theologians and canonists: Did the Tridentine law about the form of marriage extend to Protestants, both in the case of mixed marriages, and when contracting among themselves? Here again we are brought face to face with first princi-

* Ordinary includes Bishop, Vicar General, Vicar Capitular.

† So called from the first word of the Chapter—"Tametsi," "Though" or "Although."

ples ; scolding and taunts won't do. If you hold that the Church of Rome is "Antichrist" or the "Scarlet Woman," or something of that kind, naturally you will not concern yourself much with the Tridentine marriage law ; you will hold the good Protestant doctrine that Christian marriages, like pagan marriages, are validly contracted by mutual consent, unless they are voided by the civil law. But if you believe that marriage is a sacrament, and that among Christians the contract and sacrament are one ; that Christ founded a Church —one, holy, catholic, and apostolical ; that this one Church is the Church of Rome ; that she has supreme jurisdiction in spirituals over all baptised persons, whether in her fold or outside it ; then you must admit that the Council of Trent *could*, if it pleased, extend its laws to Protestants and baptised non-Catholics generally. But did the Council really extend this marriage law to non-Catholics ? Some authorities deny ; on the ground that it would do no good, but an immense amount of harm, by invalidating all the marriages of non-Catholics. But great authorities hold that non-Catholics were bound by the letter of the law. However, they were exempted from the force of the law in various ways. Where they were the parish, the law was not promulgated. In many places it could not be promulgated among Catholics for a considerable time. In the famous *Declaration*, "Matrimonia,"* dated 4 Nov., 1741, Benedict XIV. declared that marriages of Protestants with one another, and mixed marriages, were valid in Belgium and Holland, though the Tridentine form was not observed. This was not a dispensation, but a declaration that in the circumstances these Protestants were not bound by the law. Then, in several countries, for example, Ireland, Bavaria,

* This is the first word of the Declaration.

Hungary, Protestants are said to have been exempted from the law by dispensation.† Similarly the whole Russian Empire, with Russian Poland, was exempted by dispensation. Exception was made for mixed marriages in the new German Empire by the Constitution "Provida," which came into force on April 15, 1906. But in France and other countries the law was in force; and clandestine mixed marriages would not be valid without a dispensation in the law requiring marriage to be contracted in the presence of the parish priest or his delegate, and two or three witnesses. In the case of exemption from the law it was understood that the exempt person could communicate his or her privilege to the non-exempt person; and thus it came to pass that a Protestant, who was exempt, and a Catholic, who was subject to the law, could validly contract without observing the Tridentine form.

II.—The Decree "Ne Temere."‡

Years have rolled by since the Council of Trent; and in a world-wide Church, with ever-changing circumstances, it is no wonder if difficulties have been experienced in carrying out the Tridentine law regulating the form of marriage; in some cases, for example, difficulty has been experienced in determining who was the proper parish priest to assist at a particular marriage. Protestants in Ireland seem to think that the decree *Ne temere* is an attack on the liberties of Protestants. "Till 1908,"

† The Irish Bishops, even after the promulgation of the Tridentine law, believed that Protestants were not bound by the law. But some of the Roman documents of the time seem to imply that Propaganda gave a dispensation for safety's sake, lest it may have been necessary in some cases.

‡ So called from the first words of the Decree. The words run in Latin: *Lest rashly* (Ne temere) clandestine marriages be contracted, etc.

writes Mr. Gregg,* " mixed marriages in Great Britain and Ireland, wherever they were legally performed, were reckoned as valid. . . . But now since 1908 the presence of a Roman Catholic priest is declared necessary . . . . Not in the least because there is any danger of rash or hasty marriages. . . . but because, where the parish priest is not present, there may be no agreement concerning the children signed in favour of the Roman Catholic Church. . . . And so the presence of the priest is required . . . that he may have his finger in the pie, and may bring with him those unmentioned extras." Now this statement is altogether opposed to fact; Mr. Gregg knows nothing about the history or the purpose of the Decree *Ne temere.* The history of the Decree dates back to May 20, 1905. The Cardinals of the Congregation of the Council decided to call for the opinion of two canonists on the reformation of the Tridentine discipline. They laid down certain principles for the canonists: that the presence of the parish priest should be necessary—that his competence to assist at marriages should be territorial—that all Catholics all the world over should be bound by the law. The canonists submitted their views. Then the subject was examined conjointly by the Congregation of the Council and the Commission appointed for the codification of Canon Law; the provision already made for Germany in the Bull *Provida* was examined; and the Decree *Ne temere* was drawn up by the Secretary of the Congregation of the Council. And whatever other criticism might be directed against *Ne temere,* it is only ignorance and anger and sectarian alarm that can see in the Decree itself, or in its purpose or history, a deep laid scheme of proselytism. The Decree is dated August 2nd, 1907, and it came into

* The " Ne Temere " Decree, p. 10.

force generally on Easter Sunday, April 19th, 1908; but throughout the Chinese Empire, at the request of the Bishops, it did not come into force until Easter Sunday, April 11th, 1909. It affects only Latin Christendom, and does not bind Greek Catholics united to Rome; as by immemorial custom Greek Catholics are not bound by general disciplinary laws, unless it be expressly stated that the law applies to them But when a Greek Catholic marries a Latin Catholic the form of the Decree *Ne temere* must be observed.

The Decree deals with two subjects intimately connected: Espousals, or Engagements, and Marriage. I will state the new regulations for both, and notice some recent criticisms of the Decree itself.

The Decree "Ne temere" and Espousals or Engagements.

Many inconveniences were found to have arisen from unattested engagements. Hitherto a serious mutual promise of marriage, though unattested by witnesses, constituted an engagement. A valid engagement produces a natural effect and two canonical effects. The natural effect is this, that a person is bound by his engagement, and cannot lawfully marry any one else unless the engagement be legitimately cancelled. The first canonical effect coincides with the natural effect; it is an impedient impediment of the Church forbidding a person to marry any one else except the person with whom the engagement was made. The second canonical effect is the diriment impediment of public propriety, extending to one degree, by reason of which a man cannot validly marry a sister of the woman to whom he was engaged, and a woman cannot validly marry a brother of the man to whom she was engaged; and this diriment impediment

remains even after an engagement is broken. Now promises of marriage were sometimes made inconsiderately, and girls were sometimes led from the path of virtue on the assurance of a future marriage, only to find themselves later on heartlessly abandoned. Then difficulties arose for priests. Sometimes, when arrangements for the marriage of a couple had been made, a third person appeared on the scene, and objected to the priest's assisting at the marriage on the ground of an engagement with one of the party which was stoutly denied on the other side. To obviate these abuses and inconveniences, the Decree *Ne temere* establishes a new discipline for engagements.

Before stating the new law let me observe that an engagement is a contract, as marriage itself is a contract. If there is a valid contract of marriage the Church cannot prevent its being a valid sacrament, and if there are valid engagements the Church cannot deny them their obligation. But as the State can void the contracts of minors, and require certain conditions for the validity of other contracts, as of wills, so the Church can prescribe conditions which shall be necessary for the validity of the marriage contract, and for the validity of engagements, which are connected with the marriage contract. Now by the Decree *Ne temere* it is necessary for the *validity* of an engagement that it shall be contracted in writing; duly dated—day, month and year; signed by the parties and by the parish priest or Ordinary of the place, or at least by two witnesses. And if both or one of the contracting party be unable to write, this circumstance shall be noted in the written statement, and an additional witness shall be added, who shall sign the statement with the parish priest or Ordinary of the place, or with two witnesses as above. The parish priest to wit-

ness an engagement, validly and lawfully, is the parish priest of the place where the engagement takes place; whether the parties are his parishioners or not. The parties, and parish priest, or witnesses, shall be present and sign at the same time or, as it is said, in the same context; that is to say, they shall be present for the signatures, but not necessarily for the writing of the promise—there might even be a printed form of engagement. The Church requires this condition in order that Espousals be valid and binding in conscience and before the Church, whether it is an engagement of two Catholics, or of a Catholic and non-Catholic.

It may be asked how will this legislation affect actions for breach of promise of marriage? Would it be a sufficient defence for a defendant to say: I admit that I promised marriage to the lady orally, or by letter; but she was not deceived; she is a Catholic, she knew it was not a real promise, as it was not executed according to canon law? The Court, very likely, would reply with a distinction: that the lady was deceived, that she had a right to redress in the civil court, for that she knew the promise was a real one in the eye of the civil law, though she believed it to be null and void in the eye of the canon law.

Finally, let me remark that a similar discipline already existed in Spain and in Latin America, and traced its origin to a provision of the civil law. In Spain Charles IV. by an Ordinance of April 28th, 1804, ordered judges and all the tribunals of his kingdom, civil and ecclesiastical, to treat as null and void all engagements that had been made without the public instrument of a notary; and in course of time this enactment came to have the force of an ecclesiastical law. And at the request of the Fathers of the Latin American Council held in Rome in 1899 this law was

extended to the whole of Latin America. Hence the assistance of a notary was required, but not of the parish priest.

The Decree "Ne temere" and Marriage.

Christian marriage, according to Catholics, is a sacrament of the N. Law. It is no wonder then that the Church should be solicitous for the safe and reverent celebration of the marriage contract. The Council of Trent, as we have seen, prescribed for validity, that marriage should be contracted before the parish priest (or Ordinary), or his delegate, and two or three witnesses. But difficulties arose sometimes in determining who was the proper parish priest to assist at a marriage. Then there are many places in which the decree of Trent was never duly promulgated; non-Catholics were exempted from the law in most countries; mixed marriages were, generally, valid in conscience, whether contracted according to the Tridentine form, or in a Protestant church, or in a Registrar's office, or without any witness at all, merely by mutual consent; if two Catholics, bound by the Tridentine law, got married, they had to observe the Tridentine form, but if a Catholic married a Protestant the Catholic had the privilege (?) of being able to contract a sacramental marriage validly in a Registrar's office; and the time came for the Church to reconsider her marriage discipline, to establish uniformity about the substantial form of marriage.

The purpose of the Decree *Ne temere* may be said to be three-fold: to provide for the universal application of the Tridentine law, requiring the presence of the parish priest and witnesses; to simplify the necessary form of marriage and thereby to secure that marriages shall be valid; to forbid clandestine engagements, and

thus prevent their inconveniences. The following are the principal points of the Decree :

I. *The conditions for the validity of marriage.*—Two conditions are prescribed for the validity of the form of marriage. 1. Where the law of Trent was promulgated marriage between Catholics would have been invalid unless contracted *before the parish priest of one of the parties*, or the Ordinary or another priest by his leave, and two or three witnesses ; but according to the discipline of the Decree *Ne temere* the marriage will be invalid unless contracted *before the parish priest of the place where the marriage is contracted* (whether he be the parish priest of both or one of the parties or not) *or the Ordinary of the place, or another priest delegated by parish priest or Ordinary in the place, and at least two witnesses. The parish priest of the place where a marriage is contracted, or the Ordinary of the place, or a delegate of either in the place, is now the only valid official witness of marriage ;* so that if the parish priest of the parties went to assist at a marriage outside his own parish, to assist validly he should get permission from the parish priest or Ordinary of the place where the marriage was to be celebrated. 2. It is necessary that the parish priest or Ordinary or delegate, who is to assist at the marriage, should be invited and asked by at least one of the parties ; that he should assist freely, and not through violence or fear ; that he should ask and receive the consent of the parties. Hence if the parties surprised a priest and held him by force, and then declared their consent before him, the marriage would not be valid. It is not necessary, however, that they should ask the parish priest in so many words to assist at their marriage. When the priest is assisting freely, and the parties come before him, perhaps at his own request or by his own appointment,

knowing that he is the priest who will assist at, and bless their marriage, they are said to invite him to assist at their marriage. Then the priest thus invited will ask and receive the consent of the parties. If we suppose a case where the parish priest had lost his speech he could put the questions in writing, or by sign, or through an interpreter.

II. So much for the validity of the marriage. *Then for the lawful celebration of marriage:* the parish priest must satisfy himself that the parties are free to marry, that neither is already married. Then for due order certain disciplinary regulations are laid down for priests. The parish priest of the place cannot lawfully assist at a marriage, without the permission of the parish priest or Ordinary of one of the parties, or a grave cause, unless one of the contracting parties has already resided continuously in his parish for a month, or has a domicile in the parish; that is to say, according to usage, unless the bride has resided in his parish for a month, or has a domicile in it. A domicile implies that a person has taken up habitation in a parish with the intention of residing there permanently; and from the first moment of residence a domiciled person becomes, in canon law, a parishioner of the parish.

III. *What is meant by parish priest?* By the first mentioned regulation the necessary form of marriage has been much simplified. By the definition of *parish priest* which I am now about to explain, the Tridentine law has been very much extended, and uniformity established in the form of contracting marriage. In the decree *Ne temere* the expression "parish priest" is taken in a very wide sense, for the purpose of espousals and marriage. We must distinguish *parishes canonically erected;* defined *Missions* or *Districts*, such as exist in

England and the United States; what are called *Personal Parishes;* and finally *Stations* in missionary countries, where parishes or districts have not yet been marked out. Those who preside over parishes canonically erected are *parish priests* for the purpose of marriage. So are the Rectors of definîte districts or Missions, such as exist in England and the United States. So are the priests in charge of Personal Parishes. It might be asked what are these? Sometimes a priest is appointed to minister to the people of a certain rite or of certain nationalities within a parish or district; and these people are called a Personal Parish. If the priest is appointed to the territory, though only to minister to a certain class, he can validly assist at marriages generally in the district, as well as the parish priest of the place; but if his appointment is purely personal, perhaps to minister to a particular nationality in several Missions, then he can assist only at the marriage of his own people. Finally, with regard to Stations in missionary countries, every priest who has received from the Vicar Apostolic or Prefect Apostolic or other Superior a general appointment to the cure of souls in a particular "Station" is a parish priest for the purpose of marriage by the Decree *Ne temere.* There are *parish priests*, therefore, for the purposes of espousals and marriage everywhere in the Catholic world; and the form of Trent, as modified by the Decree *Ne temere*, is everywhere necessary for the validity of Catholic marriages, *viz.*, that they be contracted before the parish priest or Ordinary of the place, or the delegate of either, and at least two witnesses.

IV. In imminent danger of death, where the parish priest or Ordinary of the place, or their delegate, cannot be had, to consult the interests of conscience and (if the case should arise) the legitimising of offspring,

marriage can be validly and lawfully contracted before any priest and two witnesses.

V. Should it happen in any region that the parish priest of the place or the Ordinary or a priest delegated by either cannot be had, and that this state of things has lasted for a month, marriage can validly and lawfully be contracted by the parties declaring their consent before two witnesses.

VI. By these statutes are bound all who were baptised in the Catholic Church, likewise converts from heresy or schism (though the latter or the former should afterwards have fallen away from the Church) when they contract espousals or marriages among themselves.

VII. Non-Catholics, whether baptised or unbaptised, if they contract among themselves, are in no way bound to observe the Catholic form of espousals and marriage.

VIII. Finally we come to the case of *mixed marriages*. Catholics contracting among themselves are bound by these laws; Protestants contracting among themselves are not bound by them; but what about "mixed marriages"? Mixed marriages are not exempt generally. Catholics are bound, under pain of nullity, to observe the prescriptions of the Decree *Ne temere*, even when they contract with non-Catholics, baptised or unbaptised; "unless where it was otherwise ordained by the Holy See for a particular place or region." In the case of mixed marriages, therefore, it is not enough to get a dispensation in the impediment of *mixed religion;* it is necessary, moreover, to contract in the presence of the parish priest or Ordinary of the place, or a priest delegated by either, and at least two witnesses. Under the former discipline an exempt party could communicate exemption to a person bound by the

law, for such was the will of the legislator; but that power is taken away. A non-Catholic spouse is not bound by the law of Pius X., but cannot any longer communicate exemption to a Catholic; the Catholic is bound by the law of Pius X., and cannot validly contract without observing the prescribed form; the marriage cannot be contracted by the Catholic before the parish priest, and by the Protestant before the parson or registrar, for they must contract together; and nothing remains but to go before the priest and have a marriage which both believe to be a real marriage, or to go before the parson or registrar and have a civil marriage, which may satisfy the Protestant, but which, the Catholic believes, only leads to concubinage.

I have said that mixed marriages are not exempt *generally*. Mixed marriages in the new German Empire were exempted from the invalidating force of the Law of Trent by the Constitution "Provida," which came into force April 15, 1906; and this constitution was not withdrawn by the decree *Ne temere*. Moreover this Constitution was extended to Hungary on February 23, 1909; so that in Germany and Hungary, and in these countries alone, mixed marriages would still be valid, though contracted clandestinely. I say they would be *valid;* for even in Germany and Hungary *it would not be lawful to contract clandestinely*. Moreover certain limits are put to valid mixed marriages. The exemption holds in Germany only for a Catholic and non-Catholic born in Germany; and in Hungary, likewise, only when both spouses were born in Hungary. A Hungarian mixed marriage in Germany, or a German mixed marriage in Hungary, or a mixed marriage of Austrian-German and German, would be invalid, if not contracted in the presence of

parish priest and witnesses, as prescribed by the Decree *Ne temere.*

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One would think that neither the chapter *Tametsi* of the Council of Trent, nor the Decree *Ne temere* of Pius X., could provoke the ire of Protestant divines, at least while there is no question of mixed marriages. Yet they have called forth some criticisms from the Rev. Mr. Gregg and the Rev. Mr. Fletcher, Rector of Coolbanagher, to which I must briefly refer.

1. Marriage, say Messrs. Gregg and Fletcher,* could have been validly contracted before the Council of Trent merely by mutual consent; why, then, should the presence of the priest, be made necessary?—But the answer is obvious: because the Church decreed that henceforward the presence of the priest should be a necessary solemnity for the validity of the contract. Does not the State require *an official witness*, be he minister of religion or registrar? Does it not require conditions at one time which at another time were not necessary?

2. "But," says Mr. Fletcher, "this new condition of invalidity is uncatholic."—A fine word that "uncatholic"; but it is not applicable to the question at issue. You may ask is the *Church* catholic. But what has catholicity to do with disciplinary laws? And are the laws of "civil marriage" catholic?

3. At least, continues Mr. Fletcher, Rome is unreasonable; for she will not recognise the marriage of a Catholic contracted in a Protestant church, even though it be witnessed by a host of witnesses.—But the answer is obvious. Rome admits the validity of

* Rome and Marriage. An Examination of the recent Decree, "Ne temere." By Dudley Fletcher, B.A., B.D., T.C.D., Rector of Coolbanagher, Hebrew Sizar, Wall Biblical Scholar, Elrington Theological Prizeman, etc.

Protestant marriages in Protestant churches; and consequently she does not reject reasonable testimony. In the case of a mixed marriage in a Protestant church she does not question the testimony of the witnesses who say that such a man and woman pledged their consent to be husband and wife; but she says the consent is not a valid contract, on account of the absence of a condition prescribed for the validity of the contract, *viz.*, the absence of the parish priest, the official witness. Would Mr. Fletcher say that a marriage should be recognised by the State if witnessed by a crowd of men of the street, without a registrar or minister of religion?

4. A mixed marriage, argue Messrs. Gregg and Fletcher, if contracted in a Protestant Church on April 18th, 1908, would have been valid. Yet the same ceremony, conducted under the same circumstances is held to be invalid on April 19th! "And what is it that makes the tremendous difference? Simply the *ipse dixit* of an Italian Bishop."—But have these gentlemen and the Protestant Primate forgotten that one day divorce and the re-marriage of divorced people were impossible, that one day marriage with a deceased wife's sister was considered by Protestants to be opposed to divine law; then that the mighty, all-holy Caesar spoke; and that to-day they of the "reformed" religion give their "blessing" to marriage ceremonies which but yesterday they denounced as adulterous, incestuous unions? What a difference between the attitude of Rome and the Reform towards marriage! A mixed marriage would be invalid to-day in a Protestant church or registrar's office, though it would have been valid before the Decree *Ne temere*, because the presence of the parish priest is now insisted on as a necessary condition for the contract.

5. Finally, Mr. Fletcher asks: How can a marriage which is witnessed by a host of credible witnesses be called *clandestine?* But again the answer is obvious: the word "clandestine," when applied by canonists to marriage, has a technical or legal meaning; at present it signifies "a marriage contracted otherwise than in presence of the parish priest or Ordinary of the place, or of a priest delegated by either, and at least two witnesses."

CHAPTER IV.

Mixed Marriages.

A MIXED marriage is the marriage of a baptised person with an unbaptised person, or of a Catholic with a baptised non-Catholic. The Church has at all times reprobated mixed marriages, and more particularly the marriages of Christians with the unbaptised, say, with pagans. The religious difference between a Christian and an unbaptised person constitutes a diriment impediment of marriage, introduced into the Church rather by custom than by formal legislation: while the religious difference between a Catholic and a baptised non-Catholic constitutes only a prohibent impediment, which renders marriage unlawful but not invalid. I will consider why and to what extent mixed marriages are considered immoral or bad; the lawfulness and conditions of dispensations; a question mooted about the binding force of promises made by Protestants before mixed marriages; the relation of the Decree *Ne temere* to civil and religious liberty in the case of mixed marriages. But I must first say a few words about the character of the agitation against the *Ne temere* discipline about mixed marriages.

I.—The Agitation against the Extension of the "Ne temere" Discipline to Mixed Marriages.

It would be rash to say that there would have been no criticism of the Decree *Ne temere* if it did not extend to mixed marriages. Speaking of the Tridentine

discipline the Rev. Mr. Fletcher very foolishly writes: "It is not using too strong language to describe this new condition of validity introduced by the Council of Trent, that the witness of the parish priest is essential, as unreasonable, uncatholic, and immoral." But why should it be reasonable to require the presence of the minister or of a registrar, and immoral to require the presence of the parish priest? And of the Decree *Ne temere* he writes: "It is this absurd and antiquated legislation of the middle ages which Pope Pius X. seeks to impose upon the civilised world in the beginning of the twentieth century."

But the agitation was directed principally against the extension of the new discipline to mixed marriages. I have already referred to two pamphlets of the Rev. Canon Gregg, now Archbishop King's Lecturer in Divinity in Trinity College, on the subject. The second, the pamphlet of 1911, is particularly angry, and in general character rather resembles the productions that emanate from 18 Hawkins Street, Dublin. The Decree, according to Canon Gregg, is an "outrage on citizenship and public fidelity" (p. 9); it was devised in order that the priest "may have his finger in the pie" (p. 10). "A marriage system," he writes, "regulated by ecclesiastics who are divorced from human sympathies and the interests of the home—by men brought up under the withering and dehumanising influences of seminarism and enforced celibacy—such a system is quite ready to sacrifice individuals in the supposed interests of the system" (p. 11). (Well the Catholic marriage system regulated by the celibate ecclesiastics will never allow the dissolution of consummated marriages and the re-marriage of the divorced parties, nor the solemnization of marriages which, before, it stigmatised as incestuous, merely because they are

permitted by the State.) Again Canon Gregg writes: "We protest against the imposition of an Italian law, emanating from an Italian court, packed with Italians. We protest against the impertinence of this Italian Papal court venturing to dictate to non-Papal Irish Catholics, and to inform us that mixed marriages before a Roman priest are marriages before God, and convey holy matrimony, but that the same marriages in our Churches open the way to what Pope Pius IX. called 'filthy concubinage'" (p. 24).

Canon Gregg urges religious reasons, and considerations of honour and self-interest, why Protestants should resist the Decree *Ne temere* and avoid mixed marriages.

Speaking of a man who contemplates marrying a Catholic girl he writes: "If she is not prepared to marry you out and out, but intends to communicate the sanctities of your married life in the confessional, and to be subject to the pressure which is applied through the confessional; if you know this, and yet go on with such a marriage, you are infatuated, and ten chances to one you will end by being an utter indifferentist, or a Roman Catholic yourself" (p. 23). What does Canon Gregg mean by a Catholic wife communicating the sanctities of her husband's married life in the confessional? We may get the answer from one of the Hawkins Street publications, "Matrimonial Mistakes, and How to Avoid Them." Among the considerations urged on Protestants against marrying Catholics is the following: "Your wife (or husband, as the case may be) will have to go regularly to Confession to the priest. *There, as you partly know, the secrets of your home will be revealed. Everything will be known about yourself, your friends, your wife, your children, your actions, and the very thoughts of your*

heart. The priest will have entered your home, and henceforth home, wife, and children pass from your control." What is to be said of this? I do not wish to use strong language, and yet I can only answer: *It is a lie.*

Then again Canon Gregg writes: "To allow one's children to be brought up to believe in indulgences, to invoke the saints, and to pray to the Virgin Mary, when they would scorn to do such things themselves, is an act of no common turpitude." This is an interesting revelation of the faith of the Archbishop King's Lecturer. But what would an Anglican think of this profession of faith? Probably Anglicans would agree in rejecting indulgences—as they have no power to grant indulgences. But about invoking the saints, and praying to the Blessed Virgin? Well the best of Anglican Protestants—Bishops, clergy and people—would think it no grievance, no evil, no act of turpitude, to have their children brought up to invoke the saints and to pray to the Virgin Mary. They would call Mr. Gregg a *Protestant;* but surely would not admit his claim to be a Catholic, even a non-Papal Catholic.

Then after a lot of irrelevance about infallibility, as if any one thought that this disciplinary enactment was covered with the teaching gift of infallibility, Mr. Gregg appealed to the passions and self-interest of his auditors in Cork, to avoid mixed marriages, to stand by their own, to keep their children, not to give their brains to the other side. I have no objection to any one urging Protestants to shun mixed marriages. But it was an injudicious, a dangerous thing, to appeal to passion; to appeal to an excited audience to stand by their own. It was a provocation to the other side to stand by their own too, and that in a wider area than the area of the marriage question. And surely

the other side in Cork are not in need of Protestant brains. And it speaks well for the religious patience and tolerance of this other side that they have not allowed themselves to be provoked away, by this angry harangue, from the true path of good citizenship.

Finally Mr. Gregg warned his audience against the dangers of Catholic schools, and of Catholic friendships. It is a curious thing altogether, this Irish Protestantism ! It used to be its fashion to advocate mixed education in the universities and in the schools, to bring the children of the different creeds together during their tender, formative years. It used to be urged that it tended to the perpetuation of party spirit to keep the children and young men of different creeds apart during their school career. This was while Protestantism had supreme control. But what does Mr. Gregg say ? " Choose your friends," he says, " from your own creed, and keep clear as far as you can of social intimacies with Roman Catholics. . . . And to parents I would say, create a prejudice in your children against mixed marriages from their earliest days. Let your children make their friends among Protestants. . . . And above all educate your children at Protestant schools. One of our most serious dangers arises from the apparent thoughtlessness with which our people, especially English residents here, send their children to the monks' schools." (p. 11.) Evidently Mr. Gregg was the right man for the Divinity School of Trinity College ; Low Church Protestantism has nothing to fear from him.

II.—Why Mixed Marriages are considered Unlawful.

We may here confine our inquiry to marriages between Catholics and baptised non-Catholics. In a state

of such close union as the marriage state there is something very unnatural, let me say, in a wife going to Mass on Sunday morning, and the husband considering the Mass a " blasphemous fable and dangerous deceit " ; in the wife adoring the Sacred Host, and the husband considering her an idolator ; in the husband going to a Protestant church, and the wife considering him a heretic, a participator in the worship of a false religion. But these inconveniences appear more serious on paper than they are in reality in some sense. Mixed marriages are said to be bad, not in the sense that in themselves, and abstracting from dangers, they are intrinsically immoral ; but on account of the dangers that accompany them. Considered from the moral point of view, and independently of ecclesiastical prohibition, they might be compared to dangerous educational institutions. An educational institution might be dangerous to one, and not dangerous to another ; it might be necessary for one to frequent it, and not for another ; abstracting from a positive prohibition it might be lawful for one to frequent it and unlawful for another, who might be exposing himself without cause to the danger of moral shipwreck. So not every case of mixed marriage is necessarily sinful by reason of the dangers alone ; as is evident from the fact that some cases of mixed marriage turn our very happily. But yet there are, generally speaking, dangers : there is danger for the Catholic who wishes to contract the marriage, and danger that the children may not be brought up Catholics, that they may be brought up in a state of indifference ; and in addition to these dangers, and on account of the general danger involved, mixed marriages are everywhere prohibited by the Church. It is not lawful, therefore, for a Catholic to contract a mixed marriage without a dispensation ; and even

when a dispensation is got in the impediment of mixed religion, it is necessary to contract in the presence of the parish priest and witnesses, as already explained.

III.—Dispensations in the Impediment of Mixed Religion: The Conditions.

The Church dispenses sometimes in the impediment of mixed religion, but only on certain conditions. This leads me to speak of the power and practice of dispensing, and of the conditions imposed on the occasion of a dispensation in mixed religion.

1. *Dispensations.*—The practice of dispensing does not escape the attention of Protestant churchmen. How, queries Dr. Crozier, can a thing that is unlawful before a dispensation be lawful after a dispensation? How can a thing be lawful for the rich man who pays for a dispensation, and unlawful for the poor man who cannot pay? But Dr. Crozier pales before the Archbishop King's Lecturer in Divinity in Trinity College, when speaking of matrimonial dispensations. "This system of dispensations," writes Mr. Gregg,* "breaks down the distinction between right and wrong. Things cease to be right or wrong in themselves; they are wrong because the Pope says so, and wrong things become right because the Pope allows them." "A dispensation," he writes,† "is not to be thought of except in the case of the well-to-do"; and the inference is that, in the case of mixed marriages, strong pressure is brought to bear on the Protestant to become a Catholic in order to save the cost of a dispensation.

Now the reference to "payment" for dispensations was rather mean, coming as it did from clergymen of a church liberally provided for out of the coffers of

* The "Ne temere" Decree, p. 17.
† Mixed Marriages, p. 61.

the State and the plunder of old Catholic possessions and endowments. Protestant churchmen would have no objection to payment for dispensations if they themselves had power of dispensing ; as when Anglican bishops issue special licences by the authority of the State.

Then as to the charge that our system of dispensations breaks down the distinction between right and wrong, that things cease to be right or wrong in themselves, that they are wrong because the Pope says so, that wrong things become right because the Pope allows them, we can only say that it is unintelligible how Protestant churchmen and divines can be so unacquainted with theological and canonical principles.

To confine myself here to the case of mixed marriages : it is easily shown that dispensations in the impediment of mixed religion do not break down the barriers between right and wrong ; and that a marriage can be lawful when a dispensation is got, though it would have been unlawful without a dispensation. Not all mixed marriages are unlawful on account of danger to religion alone ; for there might be no danger in a particular case. But there is a general prohibition of mixed marriages on account of a general presumption of danger. Without a dispensation a mixed marriage would be unlawful just because the marriage is prohibited. But when the prohibition is removed by dispensation the marriage is no longer unlawful ; when, as it may be presumed, reasonable precautions are taken against possible dangers to religion. It is the same with the law of abstinence. It is unlawful to eat meat on Friday, just because it is prohibited. But if the prohibition is removed by dispensa ion, evidently it is no longer unlawful.

Protestant churchmen dislike dispensations. It is

no wonder. The exercise of the dispensing power by Rome must suggest to them a painful contrast: the contrast between a Church that has power to bind and loose, all the world over, independently of States, and the powerless bodies that have no jurisdiction, no ruling authority, that are completely subject to the State in the regulation of Christian marriage.

2. *The Conditions.*—The Church dispenses in the impediment of mixed religion if there be a grave cause. But she insists on the following conditions.—1: that the Catholic spouse shall be allowed the free exercise of the Catholic religion. 2: a promise from the non-Catholic party that all the children of the marriage shall be brought up in the Catholic faith. 3: that the Catholic spouse shall be reasonably zealous for the conversion of the non-Catholic to the Catholic faith. The two first are the principal conditions; and by general law a Catholic cannot go before a Protestant clergyman to be married with a religious rite before or after the marriage is contracted in the presence of the parish priest.

It is scarcely necessary to say that this discipline was criticised and denounced during the agitation against the Decree *Ne temere.* Again the present Archbishop King's Lecturer was the most vehement assailant. Mr. Gregg appealed to Protestants not to sign the conditions; and, with regard to promises already made, he raised the question whether Protestants are bound to observe them.

Don't Sign the Conditions, says Mr. Gregg: We say the Conditions are Reasonable.

In the sermon and lecture which constitute the pamphlets I have quoted Mr. Gregg appealed to his

audience to refuse to sign the conditions. He appealed to them, as I have already said, on doctrinal grounds, and on the ground of honour and self-interest. "To allow one's children," he said, "to be brought up to believe in indulgences, to invoke the saints, and to pray to the Virgin Mary, when they would scorn to do such things themselves, is an act of no common turpitude." "It is a crying shame," he said, "that men with Protestant names should let their children who ought to be strengthening our community grow up as Romanists, giving their Protestant blood and brain and energy to a community which would drive us out of the land if it could. Remember this. Our worldly strength lies not in anything so much as our numbers, our solidarity, our conviction, our capacity, our usefulness to our city and county. And every Protestant who has children, and consents to let them go to the other side, is a traitor to the cause."

Now I am not going to criticise or find fault with a Protestant clergyman who warns his people against mixed marriages, and appeals to them not to sign the "conditions." There should be no mixed marriages if the "conditions" were not agreed to. But one cannot fail to be struck with the peculiar arguments urged by Mr. Gregg against the signing of the conditions. It would be, he said, an act of turpitude, a dishonourable act, an act that tends to thin the flock of the Protestant clergyman. But he does not say that it would be *unlawful*, that it would be a *sin*. He says it would be an act of no common turpitude for a Protestant to allow his children to be brought up to pray to the Virgin Mary; yet he would allow this uncommon turpitude if it were understood that the boys should go with the father and the girls with the mother. He does not explain how the children of a mixed marriage

would suffer, either in the spiritual or temporal order, by being brought up Catholics.

The Catholic position is very different. It is not because of social turpitude, or mere personal dishonour, or the diminution of a congregation, that the Church has prohibited mixed marriages. And assuming Catholic principles one must admit that the conditions insisted on, when a dispensation in mixed religion is given, are necessitated by the Church's principles, and are perfectly just and reasonable. What are the fundamental principles on which the Catholic discipline is based? They are these: that Christ established *one* Church in the world; that the Church of Rome is that one Church; that all the religious bodies separated from Rome are in an *unlawful* position; that it is *not lawful* for a Catholic parent to bring up his or her children *in an unlawful religion.* Hence arise the conditions, that the Catholic spouse should be allowed freedom of Catholic worship, and that the children should be brought up Catholics. The question of the religion of children of a mixed marriage cannot be solved by crying out, Intolerance! Papal aggression! It depends on deep religious principles. A Catholic parent may have, afterwards, to yield passively to force; but how can a Catholic freely consent to have his or her children brought up in a religion which he or she believes to be *an unlawful religion?* Mr. Gregg tries to meet the difficulty, that a Protestant who urges a Catholic woman to meet him half-way (the boys to be reared in the religion of the father, the girls in the religion of the mother) is urging her to violate her conscience, by saying that the law of the Church "is obviously only a positive, and not a moral, command." Only a positive, and not a moral, command! In what Catholic author did Mr. Gregg find that distinction

of Catholic Church laws made? The statement is non-sense; it has no meaning in Catholic theology. The law of the Church is both positive and moral, binding in conscience. A Catholic cannot get a dispensation in the impediment of mixed religion unless the "conditions" are agreed to. Without the dispensation no parish priest will assist at the marriage. And if a marriage takes place in a Protestant church or registrar's office it is invalid before the eyes of the Church; what is married life in law is concubinage in the eyes of the Church; and, consequently, the Catholic spouse is necessarily excluded from the sacraments.

Protestants and their Marriage Promises.

I have said that I have no fault to find with Mr. Gregg's appeal to his people to refuse to sign the conditions. There should then be no mixed marriages if Catholics were loyal to their Church. But what right had Mr. Gregg in his lecture to raise a question or doubt, even though he expressed no opinion about it, as to whether a Protestant is bound to keep faith with his Catholic wife in regard to promises already made?

> For my part, he says, I do not think the Roman Church has any reason to complain, as it does, if promises made and extorted under pressure in this way are revolted from, and broken as the years go on. Conscience cannot permanently be surrendered by a Protestant as by a Roman Catholic; and if a man in later days sees that in making that agreement at the dictation of the Church to which he owes nothing but his disgrace, he did a shameful and foul wrong to himself and his children, I don't wonder at his doing his best to repair the wrong.

I am not a casuist, so I cannot answer the question I have in my mind (and I express no opinion on the matter), but I should be very glad to know whether Roman Catholic moral and spiritual directors think that it is worse for a man who has signed away his children to have repented of his false agreement and to have turned his back upon it, than for a man who has publicly entered in the sight of God into the marriage tie, and has lived with a Protestant woman as his wife, and has publicly acknowledged himself as the father of her children—for that man to repudiate her at the command of his Church—to deny that he is in the sight of God married to her, just because a Roman Catholic priest did not marry them, and to hold himself at liberty, if he can escape the civil law, to contract another (and a so-called religious) marriage.

There is no comparison between the McCann marriage and the promises made by Protestants on the occasion of mixed marriages. It had beeen promulgated to the world, before the McCann marriage, that no marriage of Catholics would be deemed valid, after Easter Sunday, 1908, unless witnessed by the parish priest. Similarly it is known to the world that the marriage of a Catholic with a divorced person is not recognised by the Church; nor the marriages, say, of first cousins, unless they have got a dispensation. Whoever marries a Catholic in spite of a diriment impediment should realise that, though there may be a legal marriage, the Catholic knows there is no marriage in the sight of the Catholic Church, that there is no marriage in the sight of God. It is an unprincipled thing for a Catholic to go through such a marriage ceremony. But all know that there is no marriage in the sight of the Catholic Church; and whoever marries a Catholic in

these circumstances must be prepared for the awakening and rebellion of conscience against a continued life of concubinage. It is different with the promises made by Protestants on the occasion of mixed marriages. There is no law forbidding and invalidating these promises. The keeping of the promises does not mean for a Protestant a life of concubinage, a life of sin. He can keep his promise without sin. No notice is given to the Catholic party that the promises will be disregarded; and if notice were given the marriage would have been disallowed. The promises therefore should be kept. And it was a most audacious thing to raise a question about the binding force of promises made by Protants to Catholic women on the occasion of mixed marriages; to use language, which, though care was taken to express no opinion on the subject, was naturally calculated to excite Protestants to repudiate the promises on the strength of which their wives consented to the marriages.

IV.—The Decree "Ne temere" and Civil Freedom when there is Question of Mixed Marriages.

The Decree *Ne temere* requires for the validity of a mixed marriage that it be contracted before a parish priest, as explained; and Catholics hold that mixed marriages contracted in a Protestant Church or registrar's office are null and void, leading to concubinage. But is not this opposed to civil liberty? Before answering, let me observe that the question can be widened out. It can be asked: is it opposed to civil liberty that Catholics do not recognise the marriage of divorced persons duly "blessed" in a Protestant church? Is it opposed to civil liberty that Catholics do not recognise the validity of a marriage contracted by *two Catholics* in a Protestant church or registrar's

office? The question evidently is not confined to the case of Mrs. McCann. But let us see how civil rights, in the case of mixed marriages, are affected by the Decree *Ne temere*.

1. Is a mixed marriage in a Protestant church a real marriage for civil rights? It is; for it is, what Protestants say marriage is, a civil ceremony, a civil contract in the eyes of the law. But is it a real contract in conscience? We say it is not; that it is neither a contract nor a sacrament in conscience, but a mere civil ceremony, leading to concubinage. And what is it to Protestants what Catholics think of their marriages, if they themselves are satisfied with the "civil ceremony"? Should Catholics mind if Protestants said their marriages were invalid? Not the least, if they themselves were satisfied in conscience.

2. Are the married couple really husband and wife? They are—in law, and for all civil purposes and civil rights. Are they husband and wife before God and His Church? We say they are not. But what is it to Protestants what we say or believe in the domain of conscience?

3. About conjugal rights? They have them—in law. But in conscience? We say their state is concubinage.

4. About the legitimacy of the children? They are legitimate in law, with all the rights of legitimate children. But before the Church they are illegitimate, and would be treated as such, for example, if they presented themselves for orders.

5. About the custody and education of the children? Before the Civil Power the question is governed by the general law dealing with the custody and education of children deemed by the State to be legitimate. According to Catholic principles a Catholic is bound to

bring up his children, whether legitimate or illegitimate, in the true religion which he himself professes.

There is no infringement of civil liberty or civil rights. But as Catholics cannot recognise as valid the marriages of divorced people, so they cannot recognise as valid the marriages of Catholics who do not contract according to the form of the Church.

V.—The Decree "Ne temere" and Religious Freedom.

I come to the question of religious freedom. Now, I confess I cannot understand at all how the Decree *Ne temere* can be taken as an infringement of religious freedom, as no change of religion is demanded. However, I will try to argue the case from the Protestant point of view.

1. "Is not religious freedom denied," it might be asked, "by not allowing the marriage to be contracted in a Protestant church?" In answer, I would say it is not religious freedom that is here asked, but religious equality with the Catholic Church. The grievance is, that Rome does not recognise the various sects of Protestants, and accept a policy of give and take about marriages. But that is impossible. Rome believes all religious bodies separated from the Catholic Church to be in an *unlawful* position, and cannot recognise their equality. But the Decree *Ne temere* does not interfere with religious freedom. A Protestant has now the same freedom of remaining a Protestant or becoming a Catholic that he had before the Decree *Ne temere*. Then the law falls on Catholics alone. A Protestant can marry a Protestant, and no difficulty will arise; he need not marry a Catholic and he ought not marry a Catholic unless he consents to a marriage ceremony which will satisfy the Catholic's conscience. In the case of a mixed marriage, the Catholic must

contract before a priest according to law; if the Protestant consents to a marriage before a priest, well and good, there is a marriage which satisfies both in conscience; if they both exercise their religious freedom by defying Rome and contracting in a Protestant church, well, they satisfy the ministers, and they have —what they go to church for—the civil marriage. Then, where is their grievance?

2. "But," it is asked, "is it not intolerant to exact a promise that all the children of a mixed marriage shall be brought up in the Catholic faith?" It certainly implies that the Catholic Church has some principles, and that she sticks to them. Rome is frankly and proudly intolerant, in the sense that she repudiates the doctrine that one religion is *as lawful as another*, that it is *lawful* for a Catholic to bring up his or her children in any other but the one true Church. What the Protestant principle on this subject is, if there be any, it is hard to say. If we take, for example, Presbyterians, do they consider it *unlawful* for a Presbyterian to bring up his child an Episcopalian? I should say they do not. Then with regard to those Episcopalians who have only vague, shadowy, dogmatic beliefs, and who are preaching a union of Episcopaliansim and Presbyterianism, do they consider it *unlawful* to bring up a child a Presbyterian? I am sure they do not. Neither do they consider it *unlawful* for a Protestant parent to bring up his child a Catholic; and this agitation about the faith of children is not an agitation on behalf of morality, but is prompted by the fear of Protestant ministers that they would gradually lose their flocks. There are Protestants with strong religious convictions, who think and act like Romans, who think it unlawful themselves, say, to invoke the Saints or to adore the Host, and who think it *unlawful* to bring up

their children in these beliefs ; and they ought not to marry Catholics. But there are others with equally strong convictions, who believe in the invocation of saints, whose eucharistic belief differs very little from that of Catholics, and who think it *unlawful* to bring up their children in any other beliefs ; and these would more naturally marry Catholics than Low Church Protestants or Presbyterians ; and they would regard the case of Trinity College as hopeless if they heard that the Archbishop King's Lecturer in Divinity spoke of it as an act of uncommon turptitude to bring up the children to pray to the Mother of God. Hence again it is clear that this question of the religion of children of a mixed marriage cannot be solved by crying out, Intolerance ! Intolerance ! It depends on deep religious principles. The Catholic position is, that there is only one true lawful Church which is the Church of Rome ; and that it is *unlawful* for a Catholic parent to bring up his or her children in any other Church.

It is well that the Catholic conditions for mixed marriages are being widely circulated ; for they cannot fail to impress thoughtful Protestants that the marriage rules of the Catholic Church have not been dictated by envy or jealousy, or a desire of universal domination, but that they spring from deep religious principles.

CHAPTER V.

The Case of Mrs. McCann.

The whole controversy about mixed marriages and the Decree *Ne temere* has arisen out of the case of Mrs. McCann. Accordingly it may be well to give the facts of the case ; to consider its bearing on theology and on civil and religious freedom ; to inquire why the Decree *Ne temere* is enforced in Ireland and not in Germany ; to emphasise the warning of the McCann case to Catholics.

I.—About the Facts.

There are two sides to the case. Mrs. McCann gives the following account of the facts, in her Memorial to the Lord Lieutenant (and this narrative has been repeated by Protestant churchmen in press and platform) :—

"I am a daughter of a small farmer in County Antrim, and a Presbyterian. I was married in May, 1908, in a Presbyterian church by my own clergyman to my husband, who was and is a Roman Catholic. Before our marriage he arranged with me that I should continue to attend my own place of worship and he his. . . . Afterwards we came to Belfast, where my first child (a boy) was born in June, 1909. During all this time there never was any difference between us about religious matters, and our boy was baptised by my own clergyman. My husband on Sunday would take care of the baby while I was out at church. A short time before our second baby (a girl) was born, in August last, my husband spoke

to me about changing my faith, in consequence, he told me, of the way the Roman Catholic priest was rating him, and I was visited on several occasions by this priest, who told me I was not married at all, that I was living in open sin, and that my children were illegitimate, and he pressed me to come to chapel and be married properly. . . . He threatened me if I would not comply with his request that there would be no peace in the house, that my husband could not live with me. . . . Our second baby was taken out of the house by my husband without my leave, and taken to chapel, and there baptised. . . . But the power of the priests was supreme. . . . I found that both my dear babies had been removed . . . . My husband left me, and I could not find out where he went."

But there is another side to the case; Messrs. Devlin and Dillon disposed for ever of the McCann case in their admirable speeches in the House of Commons, on the evening of February 7th, 1911, during the debate on the Address. I quote from the *Freeman's Journal*, February 8th :—

"The hon. member [Mr. Devlin] referred to the declarations he had received from the priests of the district. The first said that Mrs. McCann called on him at the beginning of October, 1910, to see if he would go to settle some difference between herself and her husband. He went to her at once and with pleasure, in the hope of being able to do some good. That was his first visit. He found that their life was unhappy, that disputes had been frequent, and rendered necessary the intervention of the police. Contrary to certain statements in the Press, he said it was absolutely false that he or any other priest took the children away. He had never accused her

of being a common woman. The fact was (Mr. Devlin said) that before any priest was called in their domestic life was anything but happy, and the police had to be called in frequently owing to their quarrels. . . . The hon. member had received that morning by post a letter from some friend of McCann. It told one of the most sordid tales of domestic misery that he had ever read. . . . Every statement in the memorial was denied, and before the House accepted one side of a domestic story, perhaps they would read the other side, and see if it was irreligion and not religion, that was responsible. . . . This had occurred in October, but the hearts of these gentlemen were not touched at all till the eve of the elections in Belfast. . . . They waited; although, to his knowledge, they had all the facts in their possession for six weeks."

"I am in a position to state [said Mr. Dillon] that if they were to-morrow to name the priest, a writ would be served, and machinery would be put in motion to bring about an investigation of this case to the bottom, and in all its details, much more effectually than by a debate in the House of Commons."

So much in reference to the alleged fact that the trouble in the McCann family was caused by priests. But let there be no doubt or concealment about it: in this case, as in the case of the marriage of a Catholic with a divorced Protestant, even when the marriage had been blessed in a Protestant church, it would be the duty of the priest to explain to the Catholic party that the so-called marriage was invalid, that the married state was only concubinage. This is the duty of the priest under the existing marriage laws; and it would be his duty if civil marriage were made obligatory on all, as it is in France.

II.—The Theological Controversy.

At the great meeting of "protest" at Belfast, the present Protestant Primate, Dr. Crozier, availed himself of the opportunity to make a weighty theological pronouncement on the sacrament of marriage. He told his audience that the sacrament of marriage was first discovered by the Council of Trent, that the theory of the Council was founded on a mistranslation of the Douay bible, that marriage is only a civil contract; for which he was sharply taken to task by the Ritualistic organ, *The Church Times*. This phase of the question I have treated already. The Primate repeated some of the frivolous arguments of Durandus against the sacramental character of marriage. Marriage, he objects, if it be a sacrament, confers an increase of grace; therefore the married man is more sanctified than the unmarried; therefore the married state is more perfect than the single. But the answer is obvious: assuming that the sacrament confers an increase of grace the married man is more sanctified than he, the same man, was the moment before he received the grace of the sacrament; but it does not follow that married men generally are more sanctified than the unmarried, or that the married state is more perfect than the unmarried.

Others have put as a theological objection, that the action of Rome is opposed to the divine command: *What, therefore, God hath joined together let no man put asunder.** But surely the question to be solved is: Hath God joined the party together? Is the marriage of a Catholic valid when he contracts before a Protestant minister and not before his parish priest? The marriage is valid in civil law. But, assuming the position of

* Matt. xix., 6.

the Catholic Church already explained, the marriage is not valid in conscience; God has not joined the party together at all; it is not marriage but concubinage, and the parties ought to be put asunder if the Protestant refuses to have the marriage validated.

III.—Relation to Civil and Religious Freedom.

It is not necessary to treat the McCann case from the point of view of civil and religious freedom; for we can apply to this case what has been written under the titles: *Church and State in Relation to Christian Marriage*, and *Mixed Marriages*.* The civil law will treat the McCann marriage as valid, McCann and Mrs. McCann as husband and wife, and the children as legitimate; it will deal with the questions of conjugal rights, desertion, maintenance, the custody and education of the children, on the assumption that the marriage is a valid marriage in civil law.

It has been argued that, irrespective of civil law, the marriage is valid, or if not that the children should be left with the mother. Either, said Dr. Prenter, the marriage is valid or invalid. If valid, the husband should not desert his wife. If invalid, the children are illegitimate, and belong in law to the mother. But in reality the marriage is valid and invalid from different points of view. Though invalid in conscience, it is valid in civil law, and accordingly the father is in law the father of the children. Besides, Catholics would not admit Dr. Prenter's principles. It is true that the civil law gives the illegitimate child to the mother. But assuming one only true Church, one only lawful Church, Catholics say that a parent is bound in conscience to bring up his or her children, legitimate or illegitimate, in the true Church.

* See p. 14.

IV.—The Case of Germany.

Then an explanation is asked, why does Rome impose this law on Ireland, while she exempts Germany, "bending where she could not break?" It would be sufficient to answer that the law binds Catholics only, and that it is no affair of Irish Protestants whether or not Rome treats Irish and German Catholics differently. Then the historical sense must be dead in the man, or he must be very ignorant of history, who, confining himself even to the present and two last Pontificates, would speak of the Popes as cringing to the Civil Power. And why speak of Rome bending to Germany, and not to Hungary? Then coming to the concession made to Germany: the concession was not wrung from Rome by agitation against the Decree *Ne temere*. The Apostolic Bull "Provida," in which the concession is made, is dated January 18th, 1906, and came into force on April 15th of the same year; while the Decree *Ne temere* is dated 2nd August, 1907, and came into force only on April 19th, 1908. The Bull "Provida" was anterior to and altogether independent of the Decree *Ne temere*. But it was not to be expected that a Constitution, which came into force in April, 1906, and which must have been designed to meet the special circumstances of Germany, would be withdrawn in 1908, though the circumstances of the country remained the same. Then the Constitution was extended to Hungary after the promulgation of the Decree *Ne temere*; very likely because the circumstances of the country in relation to "mixed marriages" are the same.

But Irish Protestants ask, Why is the same concession not made to them? I confess I cannot understand Irish Protestants asking for concessions from

"An Italian Priest." Then non-Catholics all the world over might with equal right ask for the concession; and the question would arise: Should the Pope surrender all authority over the religious celebration of marriage, when Catholics get married to Non-Catholics?

If there were danger that, in the circumstances of a particular country, a considerable number of Catholics would yield to opposition, and contract in a Protestant church or in a registry, and live in concubinage, very likely exemption would be given from the law; for the law then would be a curse and not a blessing. But have we reason to apprehend such an eventuality in Ireland? We have not; though there are, and I suppose will be, isolated cases of concubinage. How, then, does the case stand? Under the Decree *Ne temere* Protestants are not bound to marry Catholics. If a Protestant marries a Catholic in a Catholic church before the parish priest, he or she violates no law, and there will be a marriage which will satisfy both parties in conscience. If they marry in a Protestant church or before a Registrar, the marriage will be considered valid in law; the Protestant spouse will have all that the Protestant Church demands; but the Catholic must know that the marriage is really null and void, leading to concubinage. And if the old exemption were continued, how should the case stand? The marriage would be valid wherever contracted; but it would be *unlawful* for Catholics to contract otherwise than before the parish priest, as prescribed in the Decree *Ne temere*.

V.—A Warning to Catholics.

The McCann case is a warning to Catholics. It ought to act as a powerful deterrent to "mixed marriages." In the case of a contemplated mixed mar-

riage, first a dispensation should be got in the impediment of mixed religion, and then it would be necessary for the *validity* of the marriage, according to the law at present in force, that the marriage should be contracted before the parish priest or Ordinary of the place or a priest deputed by either in the place, and at least two witnesses. If a Catholic contracts in a Protestant church, or in a Registrar's office, in the sight of the Church the marriage is null and void; the marriage life is only concubinage; the children are illegitimate; if it be the mother she cannot receive the blessing after childbirth; and the sacraments cannot be administered to a Catholic living such a married life—no, not even in danger of death, unless on the conditions on which they would be administered to persons living in concubinage, who never went through any form of marriage.

And is it not a heartless, even a wicked thing, for a Protestant husband to keep his Catholic wife in this unhappy position? The fact that she remains a Catholic is a proof that her old religion has not lost its hold of her. If she goes to Mass on Sundays she knows that she is not recognised by her fellow-worshippers as a lawful wife. She cannot be admitted to the sacraments. She must feel her unhappy lot acutely when the great festivals of the Church come around. She must feel the dangers that are before her when she is going to become a mother. And what is it that keeps her excluded from the Sacraments? Simply the refusal of her husband, instigated perhaps by the taunts of his minister, to consent to a marriage before a Catholic priest, though he could do so without sin. The moral for Catholics is, to beware of mixed marriages. The Church has prohibited them. The Protestant Church in Ireland favoured them while the celebration of mixed marriages was reserved by the civil law to itself, while

it hoped to derive some benefit from mixed marriages ; but now it opposes them lest they may lead to accessions to Rome. The Catholic Church has always held them in disfavour. The rule of the Church is the safest guide. And hence I would say to Catholics : avoid mixed marriages.

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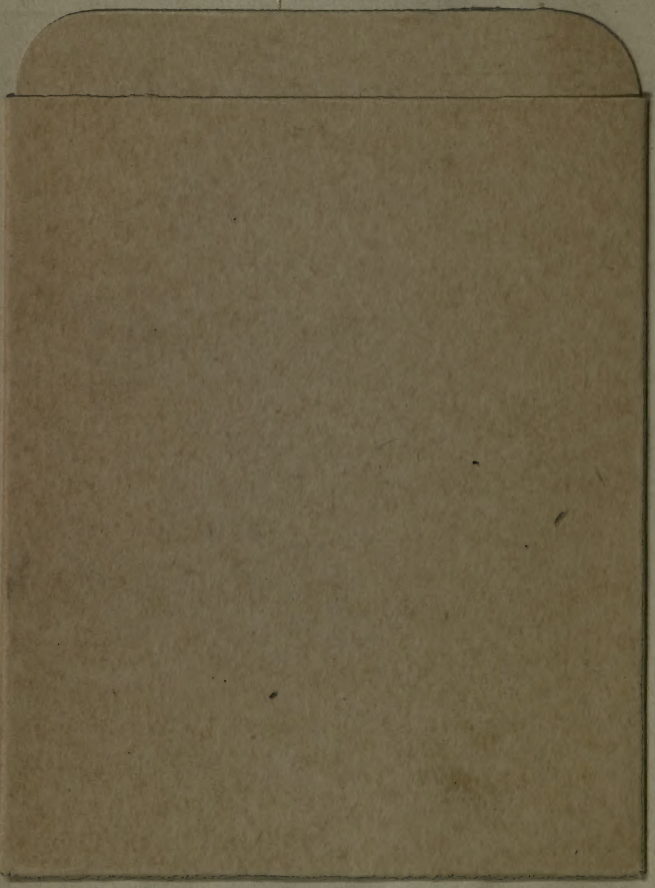

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